



POLICE DEPARTMENT

October 3, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Richard Rodriguez
Tax Registry No. 926016
Patrol Borough Bronx
Disciplinary Case No. 2010-912

Police Officer Miguel Alvarez
Tax Registry No. 937974
48 Precinct
Disciplinary Case No. 2010-915

The above-named members of the Department appeared before Assistant Deputy Commissioner of Trials Grappone on May 24, 2011, charged with the following:

Disciplinary Case No. 2010-912

1. Said Police Officer Richard Rodriguez, while assigned to the 48th Precinct, while on duty, and acting in concert with Police Officer Miguel Alvarez, Tax # 937974, while also assigned to the 48th Precinct, on February 21, 2009, at or about 1100 hours, in the vicinity of East Tremont Avenue and Crotona Avenue, Bronx County, did abuse his authority as a member of the New York City Police Department in that he arrested Julius Lewis for Disorderly Conduct without having the requisite legal authority to do so.

P.G. 208-01, Page 1, Paragraph 3a – LAW OF ARREST

2. Said Police Officer Richard Rodriguez, while assigned to the 48th Precinct, while on duty, at the date, time, and location in Specification # 1, did fail to make Activity Log entries regarding the incident pertaining to the arrest of Julius Lewis.

P.G. 212-08, Page 2, Paragraph 2 – ACTIVITY LOGS

3. Said Police Officer Richard Rodriguez, while assigned to the 48th Precinct, while on duty, at the date, time and location in Specification #1, while acting in concert with Police Officer Miguel Alvarez did abuse his authority as a member of the New York

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City Police Department in that said officer did improperly stop Julius Lewis without sufficient legal authority (*As amended*)

P G 212-11, Page 1, Paragraph 1 – STOP AND FRISK

1 Said Police Officer [redacted] 48th Precinct, while on duty and acting in concert with Police Officer Richard Rodriguez, Tax # 926016, while also assigned to the 48th Precinct, on February 21 2009 at or about 1100 hours, in the vicinity of East Tremont Avenue and Crotona Avenue, Bronx County, did abuse his authority as a member of the New York City Police Department in that he arrested Julius Lewis for Disorderly Conduct without having the requisite legal authority to do so

P G 208-01, Page 1, Paragraph 3a – LAW OF ARREST

2 Said Police Officer Miguel Alvarez, assigned to the 48th Precinct, while on duty, at the date, time, and location in Specification # 1, did fail to make Activity Log entries regarding the incident pertaining to the arrest of Julius Lewis

P G 212-08, Page 2, Paragraph 2 – ACTIVITY LOGS

3 Said Police Officer Miguel Alvarez while assigned to the 48th Precinct, while on duty, at the date, time and location in Specification #1, while acting in concert with Police Officer Richard Rodriguez did abuse his authority as a member of the New York City Police Department in that said officer did improperly stop Julius Lewis without sufficient legal authority (*As amended*)

P G 212-11, Page 1, Paragraph 1 – STOP AND FRISK

The Department was represented by Laura Edidin, Esq , Civilian Complaint Review Board Respondents were represented by Stuart London, Esq

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

DECISION

Disciplinary Case No 2010-912

Respondent Rodriguez is found Guilty

Disciplinary Case No 2010-915

Respondent Alvarez is found Guilty

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Julius Lewis and Yesenia Lewis as witnesses

Julius Lewis

Lewis, a 41-year-old resident of the Bronx, is currently employed as a head concierge at a Manhattan condominium building. He has worked in the building for three years and has worked in the industry for 14 years. He has never been convicted of a crime.

At approximately 11:00 a.m. on February 21, 2009, he was shopping with his now-wife, Yesenia Lewis ("Yesenia"), on East Tremont Avenue in the Bronx for a birthday gift for their son. After they purchased their son's gift, Lewis and Yesenia walked out of the store and proceeded to wait for the light before crossing the street. They were heading east on East Tremont Avenue toward their truck, which was parked on the opposite side of the street on Crotona Avenue. As Lewis was approaching the

intersection of East Tremont Avenue and Crotona Avenue, he was carrying two bags in his hands

East Tremont Avenue has two lanes of traffic with one lane going east while the other goes west. Crotona Avenue also has two lanes of traffic, but with one lane going north while the other goes south. Lewis testified that vehicular and pedestrian traffic at the East Tremont Avenue and Crotona Avenue intersection that day was busy. When the light changed, Lewis and Yesenia proceeded to cross east across Crotona Avenue inside the marked crosswalk. About six people, standing behind Lewis and Yesenia, were crossing the street at the same time.

As they reached the middle of Crotona Avenue, a speeding police van "almost hit" Lewis and his wife. Lewis testified that this police van, which came "very close" to him, did not have its lights or sirens on. In response to this speeding police van, Lewis, who was standing closer than Yesenia to the van, backed up and jumped. He also took his left arm and moved his wife back to protect her from getting hit. He then looked at Yesenia and said, "Did you see what happened? Did you see what just happened? They almost hit us." Lewis denied using profanity when he spoke to his wife because he "[does not] talk that way." The police van, which never completely stopped, proceeded to go and eventually made a right turn onto East Tremont Avenue before parking in front of the fish market. After the police van made this turn, Lewis and Yesenia proceeded to walk across Crotona Avenue.

After the police van almost hit him, Lewis stated that he felt "scared because [he] didn't think they _____." Lewis denied that he or Yesenia at any point stepped into the path of the police van. Rather, he testified that they were "trying to get

out of the way ” When Lewis and his wife arrived at the other side of Crotona Avenue, the driver of the police van (subsequently identified as Respondent Rodriguez) was already waiting for Lewis outside the van Respondent Rodriguez asked Lewis, “What’s your fucking problem?” Lewis replied by saying “ ” Respondent Rodriguez responded by again asking, “What’s your fucking problem?” Lewis explained that he was talking to his wife Respondent Rodriguez then told Lewis to give his wife his “fucking bags ” After giving Yesenia the bags, Lewis asked Respondent Rodriguez, “What’s going on? What’s this all about?” Respondent Rodriguez then told Lewis to turn around and proceeded to handcuff him

Once they were inside the police van, Respondent Rodriguez explained to Lewis that he was being arrested for Disorderly Conduct Lewis testified that he felt really, really embarrassed at being arrested With respect to his arrest, Lewis stated that he just did what Respondent Rodriguez told him to do because he was taught by his parents to respect the law All the while, Yesenia was crying “ ” passed between the time Lewis and Yesenia started to cross the street and the time Lewis was arrested

Lewis stated that there were a few “ ” when he was arrested In particular, there was a young man (subsequently identified as [REDACTED]) telling Respondents that what they were doing was “wrong” and that Lewis did not do anything “wrong” [REDACTED] kept on interjecting with the word “ridiculous” In response to [REDACTED], Respondent Rodriguez told him to “mind your fucking business You’re getting against the pole ” [REDACTED] replied by saying, “No, I am not getting against the pole ” Respondents eventually arrested [REDACTED] and placed him inside the van alongside Lewis

Respondents subsequently brought Lewis and [REDACTED] to the 48 Precinct station house where they placed them inside a cell. Once inside the cell, one of the Respondents asked Lewis for identification, which Lewis immediately provided. At some point later, Respondent Alvarez released Lewis from the cell, handed him a summons, and told him, "Don't worry, it's going to get thrown out." When Lewis subsequently went to court, he was informed that the case was dismissed.

On cross-examination, Lewis testified that the present case is the first complaint he has made to the Civilian Complaint Review Board (CCRB). He has no recollection of filing a CCRB complaint in 2001.¹

Lewis stated that the lights on the police van were flashing when the van sped in front of him on February 21, 2009. After he was placed in the van, he learned that Respondents were responding to a burglary in progress. Lewis said that he could appreciate that this was a "serious matter."

Lewis denied that he observed Respondents drive their van northbound in the northbound lane, and then cross over to the southbound lane, still headed northbound. The van slowed down a little bit at the intersection but did not come to a complete stop. Lewis stated that if he had not jumped out of the way, which he did with his arms up in the air and palms open, the van would have hit him. He was startled, and for a couple of seconds stopped walking. Lewis denied that he said, "What the fuck," as he jumped back. When Respondents made the right turn onto East Tremont Avenue, the light was red.

¹ CCRB records show that somebody named Julius Lewis was a party to a complaint that was filed on July 26, 2001. The CCRB attorney pointed out that there is no indication that it was Lewis who actually called in the complaint. Furthermore, the prior complaint may have involved another person named Julius Lewis.

Lewis described Respondent Alvarez as 'humble' and 'courteous'. Lewis denied that Respondent Alvarez asked him for identification and similarly denied that he told Respondent Alvarez "What the fuck? I didn't do anything wrong. I don't have to give you ID." Lewis said that at some point he asked Respondent Rodriguez why he was being arrested, to which he simply responded with, 'disorderly conduct.'

All the while, a crowd of about 20 people formed to observe this incident. At this point, [REDACTED] started "to stick up for [him]," even though to the best of Lewis's knowledge, [REDACTED] did not know that the police van had almost hit him. Lewis does not believe that [REDACTED] "riled up the crowd." Rather, he believes that "it was the way [Respondents] arrested [him], that's probably what got the crowd real hyped up." Lewis [REDACTED] bigger as [REDACTED] was talking and that it was in the interests of Respondents' safety to remove both him and [REDACTED] from the scene where a large crowd was gathering. Respondents did not verbally or physically abuse Lewis while in the van or at the station house.

Yessenia Lewis

Yessenia is a 37-year-old homemaker in the Bronx. She has never been arrested or convicted of a crime. On February 11, 2009, she and her husband, Lewis, went shopping for a birthday gift. At approximately 11:00 a.m. that day, they were walking eastbound on East Tremont Avenue toward their vehicle. At the intersection of East Tremont Avenue and Crotona Avenue, they stopped to wait for the walk light signaling that they could cross the street. When the walk light came on, they proceeded to cross the street inside the crosswalk with Lewis walking to the right of Yessenia.

About halfway through the street, Yesenia heard a 'vroom sound coming, getting louder, like getting closer. So [she and Lewis] got startled." She observed a police van driving northbound on Crotona Avenue towards the East Tremont Avenue intersection. The van, which was going "really fast," did not have its sirens on. Yesenia testified that the van came close enough to her and Lewis that she thought it was going to hit them. Yesenia's husband moved her back with his left arm and "jerked himself back" because he thought that the van was going to hit them. After the van almost hit them, it slowed down without ever completely stopping before it made a right turn even though there was a red light.

Yesenia testified that after the van almost hit her, she felt "startled" and "nervous." All the while, Lewis was talking to her in order to try to calm her down. Lewis did not use profanity. They proceeded to cross the street.

Yesenia denied that she or Lewis ever stepped into the path of the police van. When Respondent Rodriguez approached Lewis, he asked him if he had "a fucking problem." Lewis replied by saying that he was speaking to his wife. Respondent Rodriguez then told Lewis to hand Yesenia "the fucking bags" and to turn "the fuck around." Lewis complied without saying anything. Respondent Rodriguez then handcuffed Lewis. Yesenia stated that she felt angry and embarrassed for her husband. At no point during the encounter did either Respondent ask to see Lewis's identification.

Yesenia recalled that at one point a man (██████) who she never saw before told Respondents that they were arresting Lewis for no reason and that it was "ridiculous." After ██████ was also arrested, Respondents placed both him and Lewis inside the police van. Yesenia stated that she just stood there crying after

On cross-examination Yesenia reiterated that the van did not have its sirens on. Although she told CCRB investigators approximately 30 days after the incident that the sirens were on, she explained at trial that she misspoke in her statement to the investigators. What she meant to say was that the van's headlights were on. The van's windows were closed.

Yesenia reiterated that the van did not come to a complete stop. Although she stated in a March 2009 interview that the van did stop "a little before the first car waiting for the light," she explained at trial that what she meant to say was that the van came to a "rolling stop." She also clarified that there were no other vehicles waiting at the light before the van, and what she meant to say in her interview was that the rolling stop occurred a car length before the light.

She denied that Lewis got startled by the speeding police van and in response jumped back with his hands in the air. Although she stated in a February 2009 interview that Lewis put his hands out in shock, she explained at trial that what she meant was that Lewis reached out his left hand to protect her from the oncoming van. She went on to state though, that it was possible that Lewis did put up his hands, but she did not recall that happening. Lewis, who does not curse, did not say "What the fuck."

██████ resisted being handcuffed, and "a lot of people" gathered to observe the incident. Yesenia was crying and panicked. She confirmed that Respondent Alvarez was courteous. Lewis was released after approximately 20 minutes in custody. Although she and Lewis have discussed the incident, Yesenia denied discussing it before trial to ensure that their versions of the incident were consistent.

because she “know[s] what they did to [her] husband was wrong ”

Respondents' Case

Respondents testified in their own behalf

Respondent Rodriguez

Respondent Rodriguez, an 11-year member of the Department, is currently assigned to Patrol Borough Bronx. While assigned to the 48 Precinct on February 21, 2009, he was working in uniform in a marked Department van alongside Respondent Alvarez. The van's sirens and horn were not working. At approximately 11:00 a.m. that day, they responded to a “priority job,” meaning a crime in progress. Respondent Rodriguez, who was operating the van, headed northbound on Crotona Avenue toward the job location. He was initially traveling in the northbound lane but moved into the southbound lane in order to pass five or six vehicles that were waiting at a red light. At that point, the van had its lights on. Even though this incident occurred in February, the van's windows were open because it was hot inside the vehicle and Respondents were wearing their bulletproof vests.

As he approached Tremont Avenue and Crotona Avenue, Respondent Rodriguez stopped at the red light. He explained that he intended to drive through the intersection but he could not do it because the intersection was so busy. There was traffic going east and west in addition to heavy pedestrian traffic. While waiting for the light to turn green, a few of the people crossing the street stopped walking

and waved him through the light Respondent Rodriguez waved back for the pedestrians to continue crossing since the traffic was still too heavy for the van to cross the intersection

Respondent Rodriguez did not almost hit anyone but he did startle people He explained that while he was waiting for the light to turn green, he observed Lewis with his head down and Yesenia to his left walking across the crosswalk Once Lewis got to the center of the stationary van, he jumped back, put his hands in the air with palms up, and said, "What the fuck " Respondent Rodriguez believes that the flashing headlights startled him and caught Lewis ' off guard " Respondent Rodriguez testified that because he gets cursed at often, this statement did not really affect him He just waved Lewis through to continue walking

While Respondents were stopped at the crosswalk, a radio transmission indicated
 ' -ere no longer needed at the scene of the priority job Lewis, meanwhile, continued cursing with his hands in the air, saying, "What the fuck? Did you see that? What the fuck?" While still in the crosswalk, Lewis proceeded past the police van and stood in front of the vehicles to the van's right, which were in the proper lane facing northbound on Crotona Avenue When the light turned green, Lewis continued to stand in front of the front vehicle in the northbound lane, obstructing vehicular traffic for approximately ten to 15 seconds All the while, Lewis continued to curse at Respondents and throw his hands in the air Since Respondents were no longer needed at the priority job, they pulled the van over to the right at a bus stop on East Tremont Avenue and stopped Lewis _ to Respondent Rodriguez
 Lewis stopped cursing, put down his hands, and walked out of the intersection only after

the van turned onto East Tremont Avenue. The entire incident in the intersection lasted 20 or 30 seconds.

People were congregating at the bus stop and in front of a nearby store. Although Lewis was no longer cursing, he refused to show Respondent Alvarez identification upon request. At that point, Respondent Rodriguez instructed Lewis to turn around and put his hands behind his back. Lewis was placed in handcuffs. Respondent Rodriguez did not curse at or use force against him. Meanwhile, [REDACTED] who was standing by the Crotona Avenue bus stop, started yelling, 'This is fucking bullshit.' Respondent Rodriguez told [REDACTED] to be quiet, but [REDACTED] continued yelling. Respondent Rodriguez approached [REDACTED] while Respondent Alvarez placed Lewis inside the van. [REDACTED] wrapped his arms around the bus stop pole, but Respondent Rodriguez was eventually able to handcuff him. A large crowd began to gather, as there were 30 to 40 people in the area, and Respondent Rodriguez feared for his safety. Respondent Rodriguez contemplated charging [REDACTED] with inciting a riot. Both Lewis and [REDACTED] were transported to the station house. Warrant checks were run on the two prisoners, and the search came back with negative results. After 10 to 15 minutes in the station house, Lewis was released with a summons for Disorderly Conduct, obstructing vehicular traffic. Because [REDACTED] identified himself as an employee of the Administration for Children's Services, Respondent Rodriguez opted to also issue him a summons instead of arresting him. Robles' summons was for Disorderly Conduct, abusive language. [Respondent's Exhibits A and B are copies of the summonses issued to Lewis and [REDACTED].

Respondent Rodriguez conceded that he did not make any entries about the incident in his Activity Log. He explained that at the time it was common practice for the vehicle operator to not write much in his Activity Log while the vehicle recorder documented "pretty much everything." He realized that he had made an error in judgment, and he agreed that if he had to do it again he would make log entries.

Upon further questioning, Respondent Rodriguez confirmed that the basis for issuing Lewis the Disorderly ... 15 seconds that the light was green and Lewis stood in the middle of the street blocking traffic.

On cross-examination, Respondent Rodriguez confirmed that he was very familiar with the area in which the incident ...
Tremont and Crotona Avenues would be very busy on a Saturday. He was driving approximately 30 to 40 miles per hour before pulling slowly into the intersection and then stopping at the red light.²

While Lewis was crossing the street, he saw the van's lights and stopped in front of the van. Respondent Rodriguez waved for Lewis to continue crossing the street, but Lewis stopped, stared at the officers through the windshield, and cursed at them. Lewis was not attempting to block the van. Although Lewis was not compliant when Respondent Alvarez asked to see identification, he was compliant while being handcuffed and getting into the van.

² The prosecuting attorney noted that today's trial was the first time there was mention by Respondents of the van traveling northbound but moving into the southbound lane before stopping at the light. In response, the defense attorney pointed out that members of the service need to answer only those questions that are specifically posed to them in interviews.

Respondent Alvarez

Respondent Alvarez, a five-year member of the Department, is currently assigned to the 48 Precinct. At approximately 11 00 a m on February 21, 2009, he and Respondent Rodriguez were driving northbound on Crotona Avenue on the way to a burglary in progress. As they approached the intersection of East Tremont Avenue and Crotona Avenue, Respondent Rodriguez pulled the van into the southbound lane before coming to a stop at the light. At that point, Lewis, having been startled, started cursing at Respondents, saying "mother fucking ". The van windows were open, and Respondent Alvarez had a "full visual" of Lewis since Lewis was closer to him. According to Respondent Alvarez, Lewis proceeded to stand in the middle of the street, obstructing vehicular traffic. When the light changed, Respondent Rodriguez made a right turn onto East Tremont Avenue and pulled the van over in front of a store at the corner. All the while, Lewis stood in the middle of the street, "eyeing [Respondents] down ". Alvarez was watching Lewis and, accordingly, was not looking at the traffic light.

After pulling the van over, Respondent Alvarez approached Lewis and asked for identification. Lewis replied with words to the effect of, "I don't need to give you anything". Respondent Alvarez again asked Lewis for identification, and again Lewis said, "I am not going to give you anything ". Respondent Alvarez then informed Lewis that he was going to get a summons for Disorderly Conduct. When Respondent Rodriguez walked around the van to where Respondent Alvarez and Lewis were standing, the latter became complacent. Respondents handcuffed Lewis and placed him in the van.

background, and a crowd began to gather. According to Respondent Alvarez, there were ten to 15 people on their side of the street and an additional ten to 15 people across the street. [REDACTED] was holding onto a pole, but Respondent Rodriguez ultimately handcuffed him. Once [REDACTED] was placed inside the van with Lewis, Respondents left the scene quickly. Respondent Alvarez explained that it was important to leave quickly for their safety, as the people gathering at the time "looked bad."

At the station house, warrant checks were conducted and Lewis and Robles were released with summonses. Respondent Alvarez prepared the summons for Lewis, and Respondent Rodriguez prepared the summons for [REDACTED]. In total, Lewis spent no more than 20 minutes at the station house. Respondent Alvarez did not make Activity Log entries about the incident. When asked why he did not make any entries, he explained, "It was a busy day, and given the whole thing with the [burglary in progress radio run], I actually didn't even put the job in." He did, however, file the Department's copy of Lewis's summons in its proper place.

On cross-examination, Respondent Alvarez confirmed that, as the recorder, it would have been his responsibility to make Activity Log entries while Respondent Rodriguez was driving. According to Respondent Alvarez, Lewis at first blocked the intersection while standing still and then decided when the light was green to lollygag across the street. He continued, "[Lewis was] taking his time even though he saw [the van's] lights still on, he decided to stay right in the middle of the crosswalk." Lewis had already walked past the van, so [REDACTED] van. Instead it was for standing in front of the cars that were waiting to go northbound on

Crotona Avenue Respondent Alvarez asked Lewis for his identification more than two times, and Respondent Rodriguez may have also asked him for identification

FINDINGS AND ANALYSIS

While there is a sharp factual dispute between the Department witnesses and Respondents on some of the specifics of the incident underlying the present charges, the overall circumstances are not in dispute

At about 11 00 a.m. on Saturday, February 21, 2009, Lewis and his wife, Yesema, were out shopping in the vicinity of East Tremont and Crotona Avenues, a busy shopping district in the Bronx At about that same time Respondents were in a marked police van responding to an emergency call of a burglary in progress, a priority job Respondent Rodriguez was the operator while Respondent Alvarez was the recorder The van they were in had working emergency lights but the horn and siren did not function They were headed north on Crotona Avenue

There is no question that as the officers approached East Tremont Avenue the Lewises were crossing Crotona Avenue heading east This is where the stories diverge

Both Respondents testified that as they approached Crotona Avenue, because of traffic in the northbound lane of Crotona Avenue, they moved over to the southbound lane and proceeded around those cars The prosecuting attorney has complained that the officers did not mention this fact during their CCRB interviews Counsel for Respondents has argued that they were not specifically asked about this but it is difficult to understand how such a basic and significant fact would not have been part of any discussion of what occurred Whatever the reason for failure to mention it earlier, the

trial testimony of both Respondents was that they were headed northbound, in the southbound lane, when they reached the intersection of East Tremont Avenue

Lewis testified that as he was crossing the street he got to the middle before van If he was crossing from west to east he would have crossed the southbound traffic lane first before coming to the northbound lane on the easterly side of the street Yessenia also testified that they were headed in an easterly direction and got halfway across the street before encountering the police van Consequently, the first major factual difference is whether the police van was in the northbound lane or the southbound lane as it approached the crosswalk at East Tremont Avenue

The Lewises both testified that they had waited for the light and that they had the right of way when they proceeded to cross Crotona Avenue Respondent Rodriguez agreed with this as he testified that when he got to the intersection the light was against him and there were people crossing the street

Respondent Rodriguez said he stopped to let people cross Some people he said waved for him to go but he let The Lewises both testified that they were crossing the street when the police van passed them at a high rate of speed startling them and nearly hitting them Respondent Rodriguez agreed that Lewis was startled by his actions but he denied that he had come close to hitting anyone Indeed his testimony was that the Lewises were directly in front of his van crossing the street when they were apparently startled by the flashing emergency lights of the vehicle He said the vehicle was stopped when this occurred

. . . . van made a right turn onto East Tremont Avenue At about that time, the radio run was cancelled and the van pulled

over Respondent Rodriguez said that he had determined at that point to issue Lewis a summons for Disorderly Conduct and that was the purpose of pulling the van over The question of course is whether there was any basis for issuing such a summons

Respondent Rodriguez described what happened when his van was stopped and before he pulled the van over as follows

He jumped back as though he was startled, put his hands in the air, said, 'What the fuck ' I get cursed at often, so it doesn't really affect me I waved him through as I did the other people who were in front of him waved him through just to continue walking

He continued his recital of events

The gentleman that was in front of me continued cursing, hands in the air, cursing at us, ' What the fuck? Did you see that? What the fuck?' He actually moved out of the way of the van to our right He was still in the crosswalk but he was standing in front of the vehicles to my right that were in the correct lane of traffic

Respondent Rodriguez stated that the light initially was red for his direction (Crotona Avenue) but then it changed to green He said the male front of the "first car that was waiting to go through the light, still cursing at us and throwing his hands in the air ' Respondent Rodriguez' claim was that it was at that point that Lewis was blocking northbound pull over and issue the summons

When asked how long Lewis stood in the middle of the lane blocking traffic Respondent Rodriguez stated

About 10 to 15 seconds Until we actually make the right turn, that's when he actually puts his hands down, stops cursing and walks to the corner to get to the sidewalk

For his part, Lewis denied cursing. Both he and Yesinia describe the van as passing them by before they got to the northbound side of the street. Lewis testified that, after pulling his wife backward, he merely said, "Did you see that? They almost hit us with the car." He said the van made a right turn onto East Tremont Avenue and pulled over and that the driver of the van was out of the car and waiting for him when he got across Crotona Avenue.

There is credible testimony that it was the passenger, Respondent Alvarez, and not the driver, Respondent Rodriguez, who first confronted Lewis. Lewis was handcuffed and taken into custody. At the precinct, he was issued a summons for Disorderly Conduct and released. The summons was later dismissed prior to Lewis court appearance.³ The issue of Lewis being placed under arrest will be discussed later in this report. The first question that must be addressed is whether at the moment they pulled the van over on East Tremont Avenue, Respondents had a basis for charging Lewis with Disorderly Conduct because there is no question that Rodriguez pulled the van over for the purpose of taking that police action.

To do this some determination must be made about the facts. The testimony of both Respondents, that the van was headed northbound in the southbound lane seems credible. Everyone agrees that this was a busy commercial area and it seems likely that a car or cars travelling in the one northbound lane of Crotona Avenue would be stopped at the light when Respondents approached. For Respondents to go into the southbound lane to get around traffic while responding to an emergency would seem consistent with what one might expect to occur. On the other hand, it seems unlikely that on that busy

³ The summons is in evidence. The reason for the dismissal is obvious. The space entitled 'Description of Criminal Court Offense' requires a narrative of the alleged offense. The summons issued to Lewis simply contained the notation "Dis Con" and as such was facially insufficient.

morning Respondents would be able to simply drive through the northbound lane unobstructed. Why or how this key piece of information about where the police vehicle was did not come forward during the CCRB interview is certainly puzzling but there is

Of course, travelling in the wrong lane against the expected flow of traffic requires an extra measure of caution. The need for this extra measure of caution was heightened by the fact that the vehicle did not have a working horn or siren. Respondent Rodriguez claims he exercised that extra measure of caution by stopping at the crosswalk

before he proceeded. Lewis was startled by the light on the police vehicle which was stationary at that point in time. He claimed that Lewis was directly in front of the vehicle when this happened.

Respondent Alvarez gave a slightly different and more credible version of what happened. He stated that as they were "approaching" the intersection and thus apparently still in motion "a guy got startled."

Both Respondents testified that Lewis was cursing. Frankly, it is very difficult to accept that Lewis' reaction was as calm as he said it was. Certainly, either by use of vulgar language or physical gestures or both, he got the attention of both Respondents.

Respondent Alvarez described the scene of the alleged violation best. He stated that as the passenger he had a "full visual" because Lewis was closer to him. Certainly, given his position in the car, this would seem to be correct. He stated

I have my eyes on him the whole time. He is standing in the middle of the street basically eyeing us down. As we are making the turn, he was following us with his vision.

The problem for Respondents is that even taking their testimony at face value there was no reasonable basis for charging Lewis with Disorderly Conduct

For traffic to be delayed at a busy New York City intersection for 10 to 15 seconds is hardly something out of the ordinary. As such, the decision to issue a summons, let alone make an arrest, for this was petty at best

More significantly, there is no credible testimony that northbound traffic was blocked by Lewis. The police van made a right turn from the southbound lane of Crotona Avenue onto East Tremont Avenue and would likely have taken just about that much time itself and would have blocked the northbound lane during that maneuver. Respondent Alvarez' testimony makes clear that both of these events took place simultaneously. Thus, even if Lewis was not there, northbound traffic could not proceed because of the movement of the police van.⁴

Additionally, there is no independent evidence that Lewis actually impeded traffic. There was no _____ or of cars moving out of the lane around Lewis or of irate drivers asking the police for help. Nor did Respondent Alvarez, who was watching the alleged offense being committed, order Lewis to move out of the way of traffic.

Further, there is no question that Lewis was somehow startled and rightly or wrongly felt that he and his wife had just been put in danger. Given those circumstances it is not entirely surprising that Lewis might not have crossed the street with the speed he

⁴ Respondent Rodriguez described the 10 to 15-second interval as occurring before they made the turn. I reject this version as they were, by his own testimony, stopped at the light. Respondent Alvarez testified that they moved when the light changed, which makes sense. If Lewis were in the street as Respondent Rodriguez said, before they moved, he did not block traffic as it would have been stopped for the light anyhow.

initially had. Put another way, it is clear that Lewis was not trying to impede traffic but was reacting to his interaction with the police vehicle.

Both counsel have presented legal arguments on the issue of what is necessary to establish the offense of Disorderly Conduct. There is no question that a police officer may issue a summons or, if necessary, make an arrest for this offense. Nor does this Court require that an officer taking such action be absolutely correct about the law when taking that police action. What is required is good faith and that is what was absent in this case. The facts in this case indicate that there was no real blockage of traffic by

and brief period of time. As such, the decision to charge Lewis with Disorderly Conduct was a pretext for getting back at someone who was reacting poorly toward them.

There are two separate disciplinary cases, one for each Respondent. The three specifications in each are identical.

Specification No. 1 alleges that Respondents arrested Lewis for Disorderly Conduct 'without having the requisite legal authority to do so.' Specification No. 3 alleges that Respondents improperly stopped Lewis 'without sufficient legal authority.'

There was some argument that the stop and the arrest were two separate issues. The argument being that Respondents did not have a basis for placing Lewis into custody even if they had had a basis to charge him with Disorderly Conduct. Respondent Alvarez

identification. This would have provided a reason for taking Lewis into custody if there had been a basis to charge him with Disorderly Conduct.

Because there was no basis for bringing that charge, Respondents had no basis for the stop or the arrest of Lewis. For this reason, Respondents are found Guilty of Specification Nos. 1 and 3.

Specification No. 2 alleges that Respondents did fail to make Activity Log entries regarding the incident pertaining to the arrest of Julius Lewis. Each Respondent admitted this failure during their testimony and Respondents are each found Guilty of this specification.

PENALTY

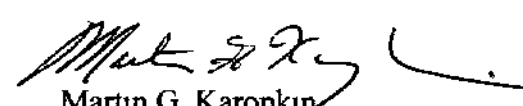
In order to determine an appropriate penalty, the service record of each Respondent was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Information from each Respondent's personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent Rodriguez was appointed to the Department on March 1, 2000. Respondent Alvarez was appointed to the Department on July 11, 2005.

Respondents Rodriguez and Alvarez have been found Guilty of abusing their authority as police officers and failing to make Activity Log entries regarding the incident. It is recommended that each Respondent forfeit 10 vacation days.

APPROVED
DEC 07 2011

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner - Trials


POLICE DEPARTMENT
CITY OF NEW YORK

From Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER RICHARD RODRIGUEZ
TAX REGISTRY NO 926016
DISCIPLINARY CASE NO 2010-912

Respondent Rodriguez received an overall rating of 4.0 “Highly Competent” on his last three annual performance evaluations. He has been awarded one medal for Excellent Police Duty. [REDACTED]

[REDACTED] He has no prior formal disciplinary record.

For your consideration

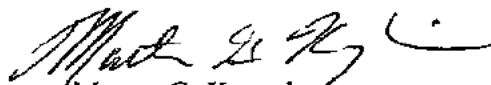

Martin G. Karopkin
Deputy Commissioner - Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From Deputy Commissioner – Trials
To Police - - -
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER MIGUEL ALVAREZ
TAX REGISTRY NO 937974
DISCIPLINARY CASE NO 2010-915

In 2009 and 2010, Respondent Alvarez received an overall rating on 4.0 “Highly Competent” on his annual performance evaluation. He was rated 4.5 “Extremely Competent/Highly Competent” in 2008. He has been awarded two medals for Excellent Police Duty and one for Meritorious Police Duty. [REDACTED] He has no prior formal disciplinary record.

For your consideration


Martin G. Karopkin
Deputy Commissioner - Trials